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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/709,527 11/13/00 STUCKY

D 196261US55DI

022850 IM52/1107
OBLON SPIVAK MCCLELLAND MAIER & NEUSTADT
FOURTH FLOOR
1755 JEFFERSON DAVIS HIGHWAY
ARLINGTON VA 22202

EXAMINER

KUHNS, A
ART UNIT PAPER NUMBER

1732
DATE MAILED:

11/07/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

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Office Action Summary

Application N. 09/709,527	Applicant(s) STUCKY ET AL.
Examiner KUHNS	Group Art Unit 1732

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE THREE (3) MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☐ Responsive to communication(s) filed on _____
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 15-17 AND 21-23 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 15-17 AND 21-23 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____
 - ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

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1. Claims 15-17 and 21-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 15 is confusing because "said molten mixture" and "said gas" in the "extruding" clause lacks antecedent basis within the claims. Also, it is unclear whether the "parts" of the constituents are by volume or by weight. Clarification is required.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 15-17 and 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cope (5,847,016). Cope discloses the basic claimed method of forming a foamed composite building material including (1) compounding about 100 parts polymeric resin, about 68 parts to 100 parts fiber per 100 parts polymeric resin, and about 0.5 to about 1.5 parts of a blowing agent per 100 parts polymeric resin to form a mixture (column 8, lines 5-11), (2) feeding the compounded mixture into an extruder, and (3) extruding the mixture containing a gas. Cope appears not to state explicitly that the mixture is molten, but such is well known in the art of extrusion of polymeric resin material and would have been obvious to one of ordinary skill in the art based on the disclosure at column 5, lines 25-26 that the extruded material begins to harden after it touches the walls of a shaper.

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Cope also discloses the use of an acrylic modifier or process aid, as in claims 16 and 21, at column 8, line 10 in conjunction with the disclosure in column 6. Cope suggests the formation of board-like shapes at column 1, line 17 in describing door, wall and window frames. It is submitted that the composite of Cope possesses physical properties within the ranges of claims 22-23 based on the constituents used to form the composite and the method used to form the composite.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Allan Kuhns whose telephone number is (703) 308-3462. The examiner can normally be reached on Monday to Thursday from 7:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jan Silbaugh, can be reached on (703) 308-3829. The fax phone number for this Group is (703) 305-7718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0661.

Allan R. Kuhns
ALLAN R. KUHNS
PRIMARY EXAMINER AU 1732
11-6-01